IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 77 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHULKUMAR PRAVINCHANDRA PAREKH

Versus

AJAY TEXTILE INDUSTRIES PVT. LTD.

Appearance:

MR ARUN H MEHTA for the appellant.

MR AS VAKIL for Respondent Nos. 1-7/6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/03/2003

ORAL JUDGEMENT

The appellant herein is the original plaintiff of Special Civil Suit No.564 of 2000. The said suit is pending before the learned Civil Judge (Senior Division), Surat. The said suit is for a declaration and injunction. The case of the plaintiff is that he is the

owner of the disputed property, being plot No.12, admeasuring 130 sq. yards, i.e. about 108.70 sq. metres. The description of the same is given in paragraph 1 of the plaint. The case of the plaintiff is that the plaintiff is the owner of the same and he has not entered into agreement for sale nor has he transferred the suit property to the defendants in any manner.

It is his case that he has become the owner of the suit property by virtue of the Will executed by the original owner, i.e. Kalavatiben Parekh, and according to him, the defendants have no right, title or interest in the property in any manner. In the said suit, he has also prayed for interim injunction restraining the defendants from transferring, alienating or dealing with the suit property in any manner during the pendency of the suit.

The said suit is resisted by the defendants on various grounds. The defendants also denied the fact about execution of Will by the original owner Kalavatiben in favour of the present plaintiff, and on various other grounds, the said suit is resisted by the defendants.

The trial court, after hearing both the sides, ultimately, rejected the application for interim injunction by order dated 14th February, 2001. The said order of the trial court is impugned at the instance of the original plaintiff in this Appeal from Order.

At the time of admitting this Appeal from Order, a learned single Judge of this Court (Coram : A.L. Dave, J.) passed the following order on 28th February, 2001.

> " ... ...
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> 1. Rule. Mr.A.S. Vakil waives service of rule for respondent no.1 to 7.
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> 2. Heard learned Advocates Mr.A.H. Mehta, and Mr.A.S. Vakil on question of interim relief pending in the appeal.
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> 3. Mr.Mehta submitted that the Opponents have no title over the property. They may be having possession of the property but not the title. The counter argument of Mr.Vakil is that the appellants has failed to make out a prima facie case.

They are ultimately not in possession of the property. They have slept over the developments publicly made by the owners and now therefore, no injunction can be granted. Mr.Vakil submitted that the construction is made to a larger extent as noted by the Trial Court. The construction work is on and therefore, no injunction can be granted against construction. As regards injunction against transfer Mr.Vakil submitted that the construction which is being made is over a large area of about 6,500 sq. meters whereas the disputed property is at plot No.12 admeasuring only 130 sq.meters and, therefore even if it is considered to prevent the Opponents from transferring the property it could be only in respect of 130 sq. meters and construction is thereon to an extent of ground, first and second floor. The alternative submission is Opponents maybe directed to deposit some amount to protect the interest of the appellant.

4. Mr.Mehta's reply is that if the respondent are permitted to transfer the property it may lead to multiple litigation. It is a question yet to be decided, whatever Opponents are owner of the property. Several suits are pending and, therefore, Opponent may not be permitted to sell the property.

5. Having regard to the contentions raised before this Court, this Court at this stage will not take into consideration the pendency of other suits and merits of those suits. At this stage, in this matter, this Court is concerned with a disputed property namely plot No.12 admeasuring 130 sq yards of which the appellants claim to be the owner. This claim is disputed by the other side. This property formerly had hutments over it and hutment dwellers ultimately handed over the possession to Opponent No.4, Himatlal Jamnadas Maniar. The land is then being developed and construction is on. In order that the appellant's interest would well be protected in the event he succeeds in

appeal/trial. The Opponents at this stage are prevented from transferring a property constructed over plot No.12 admeasuring 130 sq. yards till final disposal of this appeal. Rule made absolute. No costs.

... ..."

Accordingly, the aforesaid interim order is in force till today and in that view of the matter, there is a consensus prevailing between the parties to the effect that the said order may be continued during the pendency of the suit. Over and above the same, it is also agreed that the defendants be restrained from transferring or alienating any portion of the said land, even if there is no construction in any portion of the said disputed land. In substance, it is submitted that the interim order passed by this Court, while admitting the matter, be made absolute till the suit is disposed of by the trial court. It is also requested that, in the facts and circumstances of the case, hearing of the suit is required to be expedited. Since the parties to the litigation are agreeable to the aforesaid order, it is not necessary to examine the controversy in detail, which is arising in the proceedings. It is also required to be noted that since the suit is pending before the trial court, it would not be desirable to give detailed reasons at this stage.

Considering the aforesaid aspect of the matter, the Appeal from Order is partly allowed. The order passed by this Court on 28.2.2001 is ordered to be continued till the Civil Suit No.564 of 2000 is finally disposed of by the trial court. The defendants are also restrained from dealing with the open piece of land, if any, forming part of the said land, and the injunction will govern the said portion also if the said part of the land is still open and is not subjected to any construction. It is clarified that the observations of this Court in the present order or observations of the trial court made at the time of deciding Exhibit 5 Application may not be taken into consideration at the time of deciding the suit and the observations are only tentative in nature and the suit to be disposed of on its own merits and as per the evidence which might be led by the parties at the time of trial of the suit. In the facts and circumstances of the case, the trial court is directed to dispose of the civil suit, i.e. Special Civil Suit No.564 of 2000, as expeditiously as possible, and preferably, by 31st August, 2003.

It is also required to be noted that other suits on the same subject matter, viz., Special Civil Suits Nos. 458, 308, 306, 408, 409, 307, 457 and 456 of 2001, are also pending before the trial Court, reference about which is made by the learned single Judge in the order at the time of admitting this A.O. Against the order of the trial court, below Exhibit 5, in the aforesaid suits, A.Os., viz., A.O. Nos. 112, 283, 365, 191, 190, 282, 113, 114, 115, 116 and 117 of 2002, are also admitted and pending before me for final disposal. It is in the interest of justice that all the connected suits mentioned above are required to be heard together. Special Civil Suit No.564 of 2000 is also accordingly ordered to be heard along with other cognate Special Civil Suits, viz. Special Civil Suits Nos. 458, 308, 306, 408, 409, 307, 457 and 456 of 2001.

The learned trial Judge may take all the aforesaid suits together and decide the same so that there may not be any contradictory findings in the aforesaid pending suits.

The Appeal from Order is accordingly partly allowed. The order of the trial court is accordingly modified and is substituted by the order indicated above.

It is also clarified that so far as the present Appeal from Order is concerned, the same is disposed of in view of the consensus prevailing between the parties and, therefore, this Court has not examined the controversy between the parties, in detail. So far as the other A.Os. are concerned, this order will have no effect, and even this concession is not to be taken as the basis so far as the other A.Os. are concerned.

26th March, 2003 (P.B. Majmudar, J.)

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(apj)